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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Equal Access and Interconnection)
Obligations Pertaining to)
Commercial Mobile Radio Services)
on Notice of Proposed Rule Making)
and Notice of Inquiry)

CC Docket No. 94-54
RM - 8012

To: The Commission

COMMENTS OF WESTERN WIRELESS CORPORATION ON NOTICE OF
PROPOSED RULE MAKING AND NOTICE OF INQUIRY

Western Wireless Corporation ("WWC") hereby submits its comments in response to the Commission's Notice of Proposed Rule Making and Notice of Inquiry FCC 94-145, released July 1, 1994 in the captioned proceeding ("NPRM") regarding the imposition of equal access and interconnection obligations on commercial mobile radio service ("CMRS") providers.

I. INTRODUCTION

WWC believes the proposal by the Commission to require that non-wireline cellular carriers provide equal access, similar to the Bell Operating Companies' ("BOC's") obligations which emanated from the Modified Final Judgement ("MFJ"), will impose onerous obligations on an industry that is already facing increased competition from emerging services and is contrary to the Commission's own goal of structuring a level playing field for the CMRS marketplace. Should this proposal become a permanent fixture on the mobile services landscape, the ultimate winners will be the large interexchange carriers, with their gains coming at the expense of both the smaller, independent cellular providers and the

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subscribers of such services. WWC also maintains that interconnection between local exchange carriers ("LECs") and cellular operators should be neither mandated nor subjected to tariff filing requirements.

II. EQUAL ACCESS

A. No Public Policy Reason Exists for the Imposition of Equal Access upon Cellular Carriers

Cellular carriers should not become subject to regulatory policy which was created out of a separate, legal proceeding regarding the monopolistic control over local exchange facilities. The mobile services environment today is fundamentally different from the time prior to the breakup of American Telephone & Telegraph ("AT&T"), and any tentative conclusion to impose additional regulatory burdens on cellular service providers should include a thorough analysis of the competitive position, both current and future, of these carriers in the mobile services marketplace. It may be more appropriate to examine the issue as to whether unfettered competition, involving the BOC affiliated carriers and the non-BOC affiliated carriers alike, should dictate the necessity to impose equal access obligations on any CMRS provider, including cellular. Additionally, non-BOC affiliated cellular providers that neither directly control nor are affiliated with entities that control bottleneck facilities should not be subject to equal access requirements. These primarily smaller, independent cellular operators possess neither the historical record, market power, nor financial dominance which would require

imposition of equal access requirements.

WWC agrees with comments submitted previously by the Cellular Telecommunications Industry Association and McCaw Cellular Communications, Inc. and other commenters in response to the Petition for Rule Making filed earlier by MCI Telecommunications Corporation^{1/} stating that there is little demand by cellular customers for equal access to the interexchange carrier of choice. Additionally, an alternative inter-exchange carrier option is currently available to the cellular customer by using additional or different calling codes.

B. A Thorough Assessment of Non-BOC Cellular Carrier Market Power in the Context of the Future CMRS Marketplace Is Essential in the Determination to Impose Equal Access Obligations

As Commissioners Chong, Barrett and Quello alluded to in their respective separate statements in connection with the subject NPRM, the rapidly evolving competitive mobile services marketplace will negate any rationale or basis for imposing equal access requirements on cellular carriers or any other CMRS provider. The presence of market power by cellular carriers, given the advent of new service providers entering the marketplace, will become increasingly difficult to confirm or establish. It is likely that within 3-5 years, or equivalent to the proposed phase-in period for deployment of equal access by carriers to cellular customers, there will be as many as 5 CMRS licensees in each market offering some

^{1/} MCI Telecommunications Corporation, Policies and Rules Pertaining to Equal Access Obligations of Cellular Licensees, Petition for Rule Making, filed June 2, 1992.

form of two-way wireless voice service.

To force only cellular licensees, and not the other CMRS licensees, to provide equal access will put the cellular carriers at a distinct disadvantage in the marketplace and will discriminate against their customers. Conversely, allowing all CMRS providers in each market to offer their own package of services, including toll-free local calling areas and long distance discount usage plans, would provide consumers with a wide menu of service and long distance options to choose from while at the same time avoiding cost increases due to Commission imposed requirements. In the near future, wireless service providers, in order to compete effectively with other service providers in a market, will offer consumers the ability to select an interexchange carrier ("IXC") of choice depending upon the type of service required and the number of service providers licensed in each market.

WWC believes that, in order to further the Commission's goal of fostering a level playing field for providers of commercial mobile radio services, the Commission should adapt rules and policies that act as an incentive for, not as an impediment to, technical innovation and customer service. Nonetheless, should the Commission choose to impose equal access obligations on the two cellular carriers in each market, it should impose the same requirements on the wide-area SMR licensee, the broadband PCS licensee, and any other CMRS provider accessing the public switched network and local loop. This will ensure that a customer of any form of commercial mobile radio service will have the option to

access an IXC of choice and not be limited by the type of service he or she wishes to purchase.

C. The Obligation to Provide Equal Access Will Increase the Cost for Both the Cellular Carrier and the Consumer

The costs of implementing equal access would require the expenditure of substantial time, effort and expense to modify switch software, upgrade and reconfigure equipment to route traffic to a customer's chosen IXC. Providing multiple interexchange carrier options is costly to build and maintain in the cellular infrastructure, and these costs would inevitably be passed on to the consumer. Smaller, independent, and especially rural cellular providers will have difficulty finding the financial resources to procure and maintain IXC access throughout their network.

At present, cellular carriers often offer wide area calling plans crossing several local access and transport areas ("LATAs") without the cellular subscriber incurring a toll charge. Should equal access obligations be imposed, cellular customers would see additional charges on their bill for these calls which are now part of a packaged rate plan. As it now stands, cellular carriers can purchase toll service in bulk on a volume discount basis. To withdraw the ability of mobile service providers to negotiate a discounted volume purchase from an IXC that offers the best rate with superior service quality could create a situation where a limited group of IXCs maintain artificially high prices to providers of commercial mobile radio service. Viewed in another way, should equal access obligations be imposed on cellular

carriers, controls on IXC pricing would be difficult to maintain without competitive market conditions. Furthermore, interexchange resellers currently offer discount service from different IXCs to cellular customers as well as to landline long distance customers.

Should the FCC mandate equal access (which WWC again advocates should not be the case), at the very least, the following factors should be incorporated:

- Conversion for non-BOC cellular carriers and other CMRS providers should occur gradually: 3-5 years, depending on subscriber base, local or "toll-free" calling area, and whether the carrier is serving a Metropolitan Statistical Area ("MSA") or Rural Service Area ("RSA").
- Equal access should be provided only upon a bona fide request from an IXC.
- New services should be obligated to provide equal access sooner, because none of the network infrastructure has been constructed and equal access is therefore easier to implement and cheaper upon initial deployment than in the case of existing systems, which must be converted and upgraded.
- Should cellular carriers become so obligated, local service areas for purposes of call-handoff to an IXC should be defined according to the regional, contiguous market areas licensed to each carrier, i.e., if a cellular carrier is licensed in 10 adjacent MSA/RSA markets, the calls would be handed off to the end user's IXC of choice at the outside geographic border of the market cluster.

- Cellular and/or other CMRS providers should be entitled to recover costs of conversion to equal access through charges to the IXC.

II. INTERCONNECTION BETWEEN LOCAL EXCHANGE CARRIERS AND CMRS PROVIDERS SHOULD NOT BE MANDATED OR SUBJECT TO TARIFF

Interconnection arrangements between LECs and cellular operators should continue to be implemented according to individually agreed-upon contracts, and the Commission should not impose tariff filing requirements. Further, local exchange carriers should be required to pay equivalent rates for interconnection with CMRS providers. Individually arranged interconnect agreements allow for maximum flexibility between the LEC and cellular operator and continue to work well in the industry. New entrants into the mobile radio services should be responsible for negotiating their own arrangements to best suit their needs. Tariff filing requirements would lead to an increase in costs associated with interconnection arrangements for both the LEC and cellular operator. Favorable rates are currently obtainable under the existing system of negotiating the terms and conditions of interconnection with the local exchange carrier.

III. CONCLUSION

For the reasons set forth above, WWC respectfully requests that the Commission refrain from (i) imposing equal access obligations on non-wireline cellular carriers and (ii) mandating interconnection between LECs and cellular carriers or subjecting such interconnection to tariffs.

Respectfully submitted,

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Dated: September 12, 1994

CERTIFICATE OF SERVICE

I, Ann-Marie Mwombela, a secretary in the law offices of Gurman, Kurtis, Blask and Freedman, Chartered, do hereby certify that I have on this 12th day of September, 1994, had copies of the foregoing "Comments of Western Wireless Corporation on Notice of Proposed Rule Making and Notice of Inquiry" mailed by U.S. first class mail, postage prepaid, to the following:

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